IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 89 OF 2006

Shri Umesh Shrikant Shetye ... Petitioner

V/s

Shri Prabhakar Vishnu Patil & ors. ... Respondents

Shri S.B. Shetye for the petitioner.

Shri S.M. Oak for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 7TH MARCH, 2006

P.C.:

1. Heard both sides. Perused the record.

2. Rule. Rule made returnable forthwith by consent.

3. The petitioner has preferred this petition against the order dated 7.1.2006 passed by the lower appellate Court in pending Civil Appeal No. 29 of 2005 below application Exh.24 filed by the petitioner-appellant seeking modification of the conditional order of stay passed by the Trial Court dated 5.2.2005 which was confirmed by the lower appellate Court granting interim

stay to the decree passed by the lower Court so far as it related to possession with direction that the appellant shall deposit Rs.10,000/- as decreed by the lower Court and shall deposit arrears of rent at the rate of Rs.2000/- p.m. from the date of institution of the suit till the date before 6.6.2005.

4. By application Exh.24, the direction to deposit the rent at the rate of Rs.2000/- p.m. was sought to be modified for the reasons mentioned in details in application Exh.24. However, instead of adjudicating the application itself on merits, the lower appellate Court has directed the appellant to state if order below Exh.7 has been complied with or not.

In fact, the lower appellate Court, in my view, was required to adjudicate the application Exh. 24 on merits because the appellant had given cogent reasons as to why he sought modification of the order so far as payment of rent at the rate of Rs.2000/- p.m. was concerned. However, instead of adjudicating the application, appellant’s explanation for compliance of the said order was sought for, which, in my opinion, is not proper when the reasons for non-compliance were embodied in the application itself and the lower

appellate Court itself was of the view to adjudicate the application one way or the other on merits.

5. In view of this position, Rule is made absolute. Order dated 7.1.2006 is set aside. The lower appellate Court is directed to adjudicate the application Exh.24 on merits so as to decide whether modification sought for by the appellant in the order dated 19.4.2005 was legal and proper or not. The appellant on his part shall deposit the amount of Rs.75,000/- in the lower appellate Court to show his bonafides and willingness to comply with the order of the lower appellate Court. The amount to be deposited within six weeks from the date of this order in the lower appellate Court.

The lower appellate Court is also directed to expedite the hearing of the Appeal No. 29 of 2005 itself so as to put the dispute at rest between parties as early as possible.

6. It is clarified that the order passed by the lower Court below Exh.22 shall also be subject to the adjudication of the appeal finally on merits. With these directions, the petition stands disposed of.

Parties to act on the authenticated copy of this order.

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